NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RUSSELL ALAN SMITH, Petitioner - Appellant, V. STEVEN J. CAMBRA, JR., Director of the CA Department of Corrections; MIKE KNOWLES, Respondents - Appellees.	No. 04-17296 D.C. No. CV-01-01683-MCE/KJM MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Morrison C. England, District Judge, Presiding

Submitted April 6, 2006**
San Francisco, California

Before: NOONAN, SILER,*** and BYBEE, Circuit Judges.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit, sitting by designation.

The facts are known to the parties.

Under *McDonough Power Equipment v. Greenwood*, 464 U.S. 548, 556 (1984), a defendant is entitled to a new trial only if he can "first demonstrate that a juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." Here, the state court reasonably found that it was "too harsh to say, as defendant does, that [the juror] 'lied about her profession' or that she was 'not interested in sharing the truth' with the trial court." *People v. Smith*, No. 94F05882, at 27 (Cal. Ct. App. July 16, 1996); *see* 28 U.S.C. § 2254(d)(2) (2000). Furthermore, the similarity between the juror's and the victim's professions was insufficient to establish a presumption of prejudice supporting a challenge for cause. *See Smith v. Phillips*, 455 U.S. 209 (1982); *Tinsley v. Borg*, 895 F.2d 520, 529 (9th Cir. 1990). We cannot say that the state's ruling was an unreasonable application of clearly established federal law as determined by the Supreme Court. *See* 28 U.S.C. § 2254(d)(1) (2000).

Smith also claims that he was entitled to a hearing on potential juror bias, but we need not consider his request under habeas review because "no Supreme Court precedent holds that a failure to investigate potential juror bias presents structural error," and "the Supreme Court has not yet decided whether due process

requires a trial court to hold a hearing *sua sponte* whenever evidence of juror bias comes to light." *Sims v. Rowland*, 414 F.3d 1148, 1153 (9th Cir. 2005).

AFFIRMED.